



Group Art Unit: 1643

Examiner:

Serial No.: 09/451,527

Filed: December 1, 1999

Atty. File No.: IM-2-C2

For: “CANINE AND FELINE IMMUNOREGULATORY PROTEINS, NUCLEIC ACID MOLECULES, AND USES THEREOF”

Box MISSING PARTS

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In response to the Notice to File Missing Parts mailed from the U.S. Patent and Trademark Office on February 18, 2000 for the above-identified application, enclosed are: Declaration for Patent Application; Petition; and Declaration of Susan A. Gordon. A copy of the Notice to File Missing Parts is also enclosed.

Also enclosed is a check for \$1,744 constituting payment of the filing fee (\$690), additional claims fee (\$684), statutory surcharge (\$130), one-month extension fee (\$110) and Petition fee (\$130). Please credit any overpayment or debit any underpayment to Deposit Account No. 081930.

Assignment documents for the application have been mailed to the Assignment Branch under separate cover on this same date.

The correspondence address for this application remains:

Carol Talkington Verser, Ph.D.
Heska Corporation
1613 Prospect Parkway
Fort Collins, CO 80525

Respectfully submitted,

Dated: May 18, 2000



Timothy L. McCutcheon, Esq.

Registration No. 41,184

Heska Corporation

1613 Prospect Parkway

Fort Collins, Colorado 80525

Telephone: (970) 493-7272

Facsimile: (970) 491-9976

Date: _____

By: _____
Matthew J. Dreitz

Date: _____

By: _____
Ramani S. Wonderling

[illegible]

Before me, a Notary Public in and for said County and State, personally appeared Gek-Kee Sim, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this ____ day of _____ 1999.

My commission expires: _____

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Shumin Yang, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this ____ day of _____ 1999.

My commission expires: _____

Notary Public

[illegible]

Before me, a Notary Public in and for said County and State, personally appeared Matthew J. Dreitz, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this ____ day of _____ 1999.

My commission expires: _____

Notary Public

STATE OF COLORADO) ss.
COUNTY OF LARIMER)

Before me, a Notary Public in and for said County and State, personally appeared Ramani S. Wonderling, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office this ____ day of _____ 1999.

My commission expires: _____

Notary Public

RULE 63 (37 CFR § 1.63)
DECLARATION
FOR PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

COPY

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled "CANINE AND FELINE IMMUNOREGULATORY PROTEINS, NUCLEIC ACID MOLECULES, AND USES THEREOF", the specification of which is being filed herewith and identified as Attorney File No. IM-2-C2.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability in accordance with 37 CFR §§ 1.56(a) and (b) as set forth on the attached sheet indicated Page 3 hereof and which I have read.

I hereby claim foreign priority benefits under 35 U.S.C. 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s) <u>Number</u>	<u>Country</u>	<u>Day/Month/Year Filed</u>	Priority Claimed <u>Yes</u> <u>No</u>
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N/A

I hereby claim the benefit under 35 U.S.C. 120/365 of all United States and PCT international applications listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior applications in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information material to patentability in accordance with 37 CFR §§ 1.56(a) and (b) which occurred between the filing date(s) of the prior application(s) and the national or PCT international filing date of this application:

<u>Application Serial No.</u>	<u>Filing Date</u>	<u>Status: patented, pending, abandoned</u>
09/322,409	5/28/99	pending
60/087,306	5/29/98	pending

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

1) Inventor's Signature _____ Date _____

Inventor's Name (typed): Gek-Kee Sim

Citizenship: United States

Residence: 3622 Terry Point Drive
Fort Collins, Colorado 80524

Post Office Address: Same as Residence

2) Inventor's Signature _____ Date _____

Inventor's Name (typed): Shumin Yang

Citizenship: United States

Residence: Stanford Villa Apartment #250
3353 Alma Street
Palo Alto, California 94306

Post Office Address: Same as Residence

3) Inventor's Signature _____ Date _____

Inventor's Name (typed): Matthew J. Dreitz

Citizenship: United States

Residence: 4324 Winterstone
Fort Collins, Colorado 80525

Post Office Address: Same as Residence

4) Inventor's Signature _____ Date _____

Inventor's Name (typed): Ramani S. Wonderling

Citizenship: United States

Residence: 5808 Park Ridge Court
Fort Collins, Colorado 80528

Post Office Address: Same as Residence

37 CFR §§ 1.56(a) and (b)
DUTY TO DISCLOSE INFORMATION MATERIAL
TO PATENTABILITY

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of a patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.*

*Note, 37 CFR §1.97(h) states: "The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in §1.56(b)."